IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SECOND DAY OF NOVEMBER
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

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WRIT PETITION Nos. 23468 of 2005 & 23473 of 2005

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WRIT PETITION No. 23468 of 2005

Between:

T.Rameshwar Reddy

..... PETITIONER

AND

Central Power Distribution Company of A.P Ltd.,

(AP TRANSCO) having office at Singareni Bhavan,
Hyderabad, Rep by its Managing Director and 2 others

.....RESPONDENTS

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WRIT PETITION No. 23473 of 2005

Between:

K. Ramaiah

..... PETITIONER

AND

Central Power Distribution Company of Andhra Pradesh Ltd.,

(A.P. TRANSCO), having office at Singareni Bhavan, Hyderabad,
Rep. by its Managing Director and 2 others

.....RESPONDENTS

COMMON ORDER:

Seeking a Mandamus, declaring the provisional assessment notices dated 30.07.2005 and 12.05.2005 issued by the 3rd respondent, as illegal and arbitrary, both these two writ petitions are filed.

Heard the learned counsel for the petitioners and the learned standing counsel appearing for the respondents.

Since the same question of fact is involved in both the writ petitions, both these two writ petitions are clubbed together and this common order is passed.

It is stated that the action of the respondents in disconnecting the power supply to the petitioners, pending enquiry, on the allegations that the petitioners have committed pilferage of energy, is illegal and unsustainable and also contrary to the judgments rendered by this Court in W.P.No.20808 of 2005, dated 22.09.2005 and in W.A.Nos.452 & 477 of 2004, dated 11.03.2004. The impugned provisional assessment notices were issued to the petitioners stating that on inspection of the commercial establishments of the petitioners, it is found that the petitioners are indulged in theft of energy by illegal means as noted in the impugned notices, and accordingly, the power supply to the petitioners is disconnected and assessed the pilferage by taking into average consumption for one year and the provisional assessment has been assessed at the rate of three times.

The learned counsel for the petitioners submits that under Section 126 of the Electricity Act, 2003 (for short 'the Act'), if the assessing officer comes to the conclusion that any person found indulging any unauthorized use of electricity, he

shall provisional assess to the best of his judgment the electricity charges payable by such person, and such provisional assessment order shall be served on such person, giving a reasonable opportunity of making a representation of hearing to such person, and thereafter, final order has to be passed. If any person accepts the provisional assessment and pays the amount within 7 days, no further action shall be initiated, and if the consumer disputes the said amount of provisional assessment, it is open for him to make a representation, and there upon, it is for the assessing officer to pass an order. Under Section 126(5) of the Act, if the unauthorized use of electricity is in respect of domestic or agriculture three months average consumption charges have to be taken into account, otherwise six months average consumption charges have to be taken into account. It is further stated that under Section 126(6), the assessment made under Section 126 of the Act, shall be made at a rate equal to one-and-half times tariff rates, applicable for the relevant category of services specified, whereas, in the instant case, three times average consumption was taken in stead of one-and-half times.

Admittedly, the impugned notices are the only provisional assessment notices and under Section 126 of the Act, there is no power to disconnect the power supply, pending enquiry.

Having regard to the facts and circumstances of the case, the provisional assessments are directed to be treated as show cause notices, permitting the petitioners herein to file their explanations, within a period of 7 days from the date of receipt of a copy of this order. The action of the respondents in disconnecting the energy supply is set aside and the respondents are directed to restore the energy supply to the petitioners forthwith, keeping it open to pass appropriate final orders after submitting the explanations and after giving a reasonable opportunity to the petitioners, in accordance with law.

With the above observations, these Writ Petitions are disposed of. No order as to costs.

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V.ESWARAIAH,J

Dated: 02.11.2005

Dsr